

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SUM CHAN,
Plaintiff,

Case No. **1:19-cv-07239-RPK-JO**

v.

THE CITY OF NEW YORK, NEW YORK CITY
POLICE DEPARTMENT, QUEENS COUNTY
DISTRICT ATTORNEY'S OFFICE, POLICE
OFFICER RAFFAELE BARILE, POLICE
OFFICER STACY RAO & QI WENG,
Defendants.

ANSWER AND COUNTERCLAIM
OF QI WENG

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Defendant Qi Weng ("Weng") by and through his attorney herein, Law Offices of Xuejie Wong PLLC, alleges, in answer to the specific numbered paragraphs of the Complaint herein, as follows:

1. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

2. Denied.

3. Denied.

4. Denied.

5. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

6. Admitted that venue is proper in this Court.

7. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

8. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

9. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

10. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

11. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

12. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

13. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

14. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

15. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

16. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

17. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

18. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

19. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

20. Admitted that Weng is a “private state actor.” Otherwise denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

27. Weng realleges his answers to Paragraphs 1-26 as though fully set forth herein.

28. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

29. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

30. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

31. The allegations of the first sentence are admitted. Weng lacks any personal knowledge of the allegations set forth in the second sentence of this Paragraph and therefore denies the same on the basis of information and belief.

32. Denied.

33. Admitted that Plaintiff pulled out scissors and pointed them at Weng, denied that they were “tiny” or 3.5 inches in length, that Plaintiff intended to use them or did use them to “defend himself” or that Plaintiff “pointed them to the sky.”

34. Denied.

35. Denied.

36. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

37. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

38. Admitted that two police officers talked to Weng at some point. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

39. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

40. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

41. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

42. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

43. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

44. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

45. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

46. Denied that Plaintiff was a “victim” or that Weng was a “perpetrator.” Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

47. Denied to the extent the allegations refer to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

48. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

49. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

50. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

51. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

52. All allegations as to Weng are denied. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

53. omitted.

54. Denied.

55. Denied.

56. Weng realleges his answers to Paragraphs 1-55 as though fully set forth herein.

57. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

58. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

59. Weng realleges his answers to Paragraphs 1-58 as though fully Weng realleges his answers to Paragraphs 1-58 as though fully set forth herein.

60. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

61. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

62. set forth herein.

63. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

64. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

65. Denied.

66. Weng realleges his answers to Paragraphs 1-66 as though fully set forth herein.

67. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

68. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

69. Weng realleges his answers to Paragraphs 1-71 as though fully set forth herein.

70. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

71. Denied

72. Weng realleges his answers to Paragraphs 1-71 as though fully set forth herein.

73. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

74. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

75. Weng realleges his answers to Paragraphs 1-71 as though fully set forth herein.

76. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

77. Weng realleges his answers to Paragraphs 1-76 as though fully set forth herein.

78. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

79. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

80. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

81. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

82. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

83. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

84. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

85. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

86. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

87. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

88. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

89. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

90. Weng realleges his answers to Paragraphs 1-89 as though fully set forth herein.

91. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

92. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

93. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

94. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

95. Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

96. Denied.

97. Weng realleges his answers to Paragraphs 1-96 as though fully set forth herein.

98. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

99. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

100. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

101. Denied. as to any allegations directed to Weng. Otherwise, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

102. Except for the allegation regarding Plaintiff's refusal to cooperate, which is denied, Weng lacks any personal knowledge of the allegations set forth in this Paragraph and therefore denies the same on the basis of information and belief.

103. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

104. Denied.

105. This Paragraph does not allege facts against Weng. To the extent it is construed to allege facts, such facts are denied.

106. Denied.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction over the claims against Weng.
2. Plaintiff has failed to state a claim upon which relief can be granted.
3. Any injury that caused to Plaintiff was a result of Weng using reasonable force to ward off, out of self-defense, Plaintiff's unprovoked assault and battery. Plaintiff instigated an argument, threatened to kill Weng with scissors, and choked Weng before Weng ever took any action to defend himself. The force Weng used was no greater than that necessary to protect him from further assault and battery.
4. Plaintiff has failed to mitigate damages.

WHEREFORE, Weng prays that Plaintiff take nothing by way of his Complaint, that the Complaint be dismissed and that Weng be awarded his attorneys' fees, costs of suit, and such other relief as the Court deems appropriate.

COUNTERCLAIM

1. In the event that the Court determines that supplemental jurisdiction exists between, Plaintiff and Weng pursuant to 28 U.S.C. 1367(a), Weng alleges the following counterclaims against Plaintiff as follows.

2. On December 26, 2019, in downtown Flushing, New York, Plaintiff approached Weng's vehicle, pounded on the driver's side window with great force, and demanded that Weng move his vehicle.

3. When Weng opened his window to talk with Plaintiff, and asked why he would not park in a vacant spot, Plaintiff reached through the window of Weng's vehicle and choked and throttled Weng until Weng was gasping for breath. Plaintiff's nail slicked into his neck and caused it bleeding and hard to breath.

4. Weng was still sitting in the car, and had to push Plaintiff off of his neck.

5. Weng then opened his car door, and Plaintiff then took out scissors from a black bag, pointed them in the direction of Weng and stated to him, in sum and substance, "I am going to kill you, be careful."

6. After Plaintiff made further threatening statements to Weng,

7. Plaintiff's assault and battery upon Weng, as alleged in the foregoing Paragraphs, has caused Weng to suffer physical and emotional injuries, pain and suffering, and loss of income in an amount to be proved at trial. In addition, as a proximate result thereof, Weng has incurred and is continuing to incur medical expenses in an amount to be proved at trial.

8. Wherefore, Defendant demands judgment in the sum of \$1,251,000.00.

WHEREFORE, Weng prays that the Court enter judgment on this Counterclaim in the amount of \$1,251,000 and punitive damages proved by Weng and that the Court award Weng attorneys' fees, costs of suit, interest, and such other relief as the Court deems appropriate.

/s/ Xuejie Wong
Xuejie Wong, Esq.,
Law Offices of Xuejie Wong, PLLC
Attorney for Plaintiff
136-20 38th Avenue, Suite 9I,
Flushing, New York 11354
(718) 461-8461
Attorneys for Qi Weng